

28 MAY 2008



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

McKenna Long & Aldridge
1900 K Street NW
Washington DC 20006

In re Application of :
WU et al. :
Application No.: 10/555,669 : DECISION
PCT No.: PCT/US2004/013756 :
Int. Filing Date: 05 May 2004 :
Priority Date: 05 May 2003 :
Attorney's Docket No.: 26148.1180 :
For: ANTI-CANCER DNA VACCINE EMPLOYING :
PLASMIDS ENCODING SIGNAL SEQUENCE, :
MUTANT ONCO-PROTEIN ANTIGEN, AND HEAT :
SHOCK PROTEIN :

This decision is in response to applicants' "PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT" filed in the United States Patent and Trademark Office (USPTO) on 12 March 2008, which has properly been treated as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 05 May 2004, applicants filed international application PCT/US2004/013756, which designated the United States and claimed a priority date of 05 May 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 18 November 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 07 November 2005 (05 November 2005 being a Saturday).

On 07 November 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 19 September 2006, the DO/EO/US mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) was required.

On 22 March 2007, applicants filed a response to the NOTIFICATION OF MISSING REQUIREMENTS including, *inter alia*, a declaration of inventors.

On 05 October 2007, the DO/EO/US mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) indicating, *inter alia*, that the response filed 22 March 2007 was acknowledged but that the requirements set forth in the NOTIFICATION OF MISSING REQUIREMENTS mailed 19 September 2006 had not been met. Specifically, it was indicated that the declaration of inventors filed 22 March 2007 was not in compliance with 37 CFR 1.497(a)-(b) in that an Application Data Sheet (ADS) was required for the declaration submitted. This NOTIFICATION set a time limit of ONE MONTH from the date of this Notification or within the time remaining in the response set forth in the NOTIFICATION OF MISSING REQUIREMENTS mailed 19 September 2006, whichever was longer. This Notification also noted that no extension of this time limit may be granted under 37 CFR 1.136, but that the period for response set in the NOTIFICATION OF MISSING REQUIREMENTS mailed 19 September 2006 may be extended under 37 CFR 1.136(a).

On 12 February 2008, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to respond the NOTIFICATION OF MISSING REQUIREMENTS mailed 19 September 2006.

On 12 March 2008, applicants filed the instant petition.

DISCUSSION

The petition requests that the holding of abandonment be withdrawn because applicants responded to the NOTIFICATION OF MISSING REQUIREMENTS on 22 March 2007. However, as noted above, that response was defective. Applicants failed to respond to the NOTIFICATION OF DEFECTIVE RESPONSE mailed 05 October 2007.

CONCLUSION

For the reasons set forth above, the petition to withdraw the holding of abandonment is **DISMISSED** without prejudice.

The application is abandoned for the reasons set forth in the NOTIFICATION OF ABANDONMENT mailed 12 February 2008.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter may be filed electronically via EFS-Web or if mailed should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Daniel Stemmer/

Daniel Stemmer
PCT Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (571) 272-3301
Facsimile: (571) 273-0459